

STATE PROPERTIES COMMITTEE MEETING

TUESDAY, JULY 5, 2011

The meeting of the State Properties Committee was called to order at 10:02 a.m. by Chairman Ronald N. Renaud. Chairman Renaud introduced the newest member of the State Properties Committee, Lawrence Eichler, who was recently approved to serve as a Public Member to the Committee. Chairman Renaud stated that Mr. Eichler has an extensive background in law, real estate, commercial development and the like, and noted that he is a valued and welcomed addition to the State Properties Committee. Attendance of the members was taken by roll call and the following members made their presence known: Robert Griffith representing the Rhode Island Department of Administration; Richard Woolley representing the Rhode Island Department of Attorney General; Robert W. Kay and Lawrence S. Eichler, Public Members; and Andrew Marcaccio representing the Rhode Island Office of the General Treasurer, Ex-officio Member. Others in attendance were Anthony Robinson from the State of Rhode Island General Assembly; Colleen Kerr and Annette Jacques from the Rhode Island Department of Transportation; Mary E. Kay, Michelle Sheehan, Lisa Primiano and Allison Logan from the Rhode Island Department of Environmental Management; Mary Ellen McQueeney-Lally and Liz Anderson from the Rhode Island Department of Labor and Training.

Chairman Renaud stated for the record that the State Properties Committee did have a quorum present.

ITEM A – Department Labor and Training – A request was made for approval of and signatures on a Memorandum of Understanding, by and between the Department of Labor and Training, the Department of Environmental Management and the Department of Behavioral Health, Developmental Disabilities and Hospitals to host the annual Farmers’ Market at the Pastore Complex, every Friday between 10:00 a.m. and 2:00 p.m., from July 22, 2011, to September 23, 2011. Ms. McQueeney-Lally indicated that this annual event has been operating from the Pastore Complex since 2006. Ms. McQueeney-Lally noted that it has been a very successful endeavor for all individuals and agencies involved. As the Division of Capital Projects will soon begin work on several projects at the Pastore Complex, Chairman Renaud asked exactly where the Farmers’ Market is setup within the Complex.

Ms. McQueeney-Lally explained that the Market is set up within the Margaret Walsh Park’s portion of the Pastore Complex, which is located near the Department of Labor and Training building. Chairman Renaud noted that neither the impending projects, nor the Farmers’ Market shall have any impact on the other given their locations. As the Department of Corrections is also located within the Pastore Complex, Mr. Griffith asked why it is not a party to the subject Memorandum of Agreement. Ms. McQueeney-Lally stated that the Department of Behavioral Health, Developmental Disabilities and Hospitals controls the parcel of land upon which the Farmers’ Market is setup; the Department of Environmental Management contacts and recruits the local farmers who partake in the market; and the Farmers’ Market was originally the initiative of the

Department of Labor and Training and the staff is largely involved and responsible for managing and ensuring that the market operates smoothly and efficiently. Ms. McQueeney-Lally stated that The Department of Corrections is certainly encouraged to participate and frequent the Farmers' Market; however, there is no reason, legal or otherwise, for them to be an actual party to the Memorandum of Understanding. Mr. Kay asked if the insurance coverage policy includes product liability. Ms. McQueeney-Lally stated that the insurance coverage policy does in fact include product liability. A motion to approve was made by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM B – Department of Environmental Management – A request was made for approval of and signatures on a Tripartite Agreement with Point Property Management, LLC and The Washington Trust Company relative to the business operated from 55 State Street in the Port of Galilee in the Town of Narragansett. Ms. Kay stated that the Department of Environmental Management owns and manages land within the Port of Galilee. The land was condemned in the 1940s to be utilized as a commercial fishing port. Ms. Kay explained that business owners construct their own facilities/buildings on land which they lease from the Department of Environmental Management.

Ms. Kay noted that unlike other State lease agreements, the Port of Galilee lease agreements are often for a term of ten (10) years and include up to four (4) options to renew for additional ten (10) year periods of time. Ms. Kay explained that the reasoning behind the

extended lease term is to assist the business owners in securing financing for their operations and buildings. Ms. Kay noted that Point Property Management, LLC's Lease Agreement is an example of just such an arrangement. Point Property Management, LLC is housed in a rather large commercial fishing facility where it processes fish purchased from local fishermen by the boatload and ships it to various locations across the country. Ms. Kay explained that Point Property Management, LLC has secured a loan with The Washington Trust Company, which is a financial institution that does a great deal of work with business owners in the Port of Galilee. Ms. Kay indicated that the Department often agrees to enter into tripartite agreements with commercial fishing businesses and financial institutions. Said agreements stipulate that if a tenant should default relative to the land lease, the Department of Environmental Management has an obligation to notify the lending institution of said default upon the forwarding of the notice of default to the tenant. Ms. Kay explained that as the financial institutions are lending money in part to allow business owners to purchase new equipment; the lenders have a priority interest in the businesses' personal property, which includes any property that is not permanently affixed to the building. Ms. Kay stated that said agreements allow the lender to foreclose on the mortgage in an attempt to recover some of their investment. Obviously, the lender can not foreclose on the property as that is owned by the Department; however, it can foreclose and sell the personal property at auction in an attempt to recover losses. The Department, under the tripartite agreement, receives a secondary

interest in said personal property. Mr. Griffith stated that as he has not been closely involved with the Port of Galilee land leases for some time now, he does not recognize Point Property Management, LLC as one of the major fish processing businesses at the Port. Ms. Kay explained that Point Property Management, LLC approached the Department in 2006; however, the owner has been active as both a commercial fisherman and later as a processor for many years. This particular business was previously owned and operated by the Paiva family from the City of Cranston. Ms. Kay stated that the subject facility is the third largest after Slaven, which is now defunct and Town Dock Fish, Inc. A motion to approve was made by Mr. Woolley and seconded by Mr. Kay.

Passed Unanimously

ITEM C – Department of Environmental Management – A request was made for approval of and signatures on a License Agreement, by and between the Department of Environmental Management and Interstate Navigation Company for use of Pier No. 3 located at Fort Adams State Park in the City of Newport. Ms. Kay explained that this License Agreement will allow Interstate Navigation Company to utilize Pier No. 3 for the embarking and disembarking of ferry passengers who travel from Newport to Block Island. The ferry leaves the pier for Block Island at 9:00 a.m. and returns at 7:00 p.m. Ms. Kay stated that Pier 3 is State-owned and controlled by the Department of Environmental Management. The construction of said pier was funded with Federal Intermodal Funding; therefore, the revenue received from Interstate Navigation Company is used to maintain Pier 3 as well as other piers

situated at Fort Adams State Park. Ms. Kay noted that the arrangement between the Department and Interstate Navigation Company has been in place for a minimum of twenty-five (25) years. The Licensee is granted priority for forty-five (45) minutes during the embarking of passengers in the morning and then again during the disembarking process in the evening. Ms. Kay stated that Interstate Navigation Company maintains a \$9 million dollars liability insurance coverage policy and the State of Rhode Island is named as an additional insured on the same. Interstate Navigation Company also transports passengers from Point Judith in Narragansett to Block Island, which is its most popular route to Block Island. Ms. Kay indicated that the license fee will be increased by three (3%) percent in accordance with the Consumer Price Index (the "CPI"). Ms. Kay noted that this is an annual License Agreement, which includes two (2) one-year options to extend. Mr. Eichler noted that the License Agreement contains language that stipulates that any necessary repairs to the dock will be the responsibility of the Licensee and asked if the dock is inspected upon the commencement date of the License Agreement and whether periodic inspections are conducted throughout the Agreement's term. Ms. Kay indicated that there is a year-round employee of the Department that inspects the pier along with the grounds at Fort Adams State Park. The Department is well informed as to the condition of the pier as it is a relatively new structure and is closely monitored. Mr. Eichler asked if the Department issued a Request for Proposals or commissioned an appraisal of the pier to ensure that fair market value is being paid for

the Licensee's use of the pier. Ms. Kay explained that the Department commissions appraisals of its property regularly; however, due to the cost of appraising this particular property, the Department has the pier appraised periodically and subsequently increases the lease fee in accordance with the CPI. Mr. Griffith asked if the ferry transports motor vehicles to Block Island. Ms. Kay stated that the ferry transports only passengers and bicycles. A motion was made to approve by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM D – Department of Environmental Management – A request was made for approval of and signatures on a Commissioner's Deed for the purchase of approximately 103.5 acres of land located along Tower Hill Road in the Town of Cumberland. Ms. Primiano presented a site map of the subject property and the surrounding area for the Committee's review. Ms. Primiano indicated that the Department estimates that upon the acquisition of the subject property, this area will contain a total of approximately 800 contiguous acres of land. Ms. Primiano also noted that there is a very impressive trail system that runs through both the subject property and the Diamond Hill Reservation. Ms. Primiano stated that this particular property has been on the Department's acquisition list for over twenty (20) years. Ms. Primiano explained that the owner of the subject property passed away several years ago and due to differing opinions among the heirs regarding whether the land should be preserved as open space, the matter was eventually litigated and the result is evidenced by the Commissioner's Deed before the Committee today. Ms. Primiano

stated that the funding for this acquisition comes from various sources. The State of Rhode Island's contribution is \$210,000. Ms. Primiano noted that there are two (2) existing dwellings on the property; one on the north side and the other on the south side of the property. Said dwellings will be sold privately. Ms. Primiano indicated that both structures are located within a historic district and are in great need of repair; therefore, the Department determined that selling the dwellings would be prudent, given the Department's lack of available funding to repair and renovate the houses. Mr. Woolley asked if the Department is confident that adequate title insurance has been secured, as the conveying document is a Commissioner's Deed rather than the preferred Warranty Deed. Ms. Primiano stated that without exception, the Department obtains adequate title insurance to ensure the State of Rhode Island's interest is protected relative to the acquisition of any property. Mr. Griffith asked if bicycles will be allowed to utilize the aforementioned public trails. Ms. Primiano indicated that the Department's preference is that the trails be utilized for hiking only. Ms. Primiano stated that the Department is also planning to create a small parking lot on Tower Hill Road, which will provide additional access to the property, as access is extremely limited at the present time. Ms. Primiano explained that there is only a very small access point from Diamond Hill Road, which is difficult to see. Therefore, one of the Department's primary goals is to increase public access to the subject property. Ms. Primiano noted that the Department has been granted federal funds, which will be allocated to assist in constructing the parking lot and additional

hiking trails throughout the property. Mr. Griffith asked if the Department has adequate funds available to maintain the parking lot, hiking trails and the property in the future. Ms. Primiano noted that the Department does not have a specific dollar amount set aside for the maintenance of the subject property; its upkeep will be incorporated into the Department's standard management and maintenance practices. Ms. Primiano noted that Mayor McKee, the Cumberland Land Trust and the Open Space Commission have all been very involved in and supportive of this project. The Department has put them on notice that it will require local assistance relative to enforcement issues. Ms. Primiano indicated that construction of the trail system will be accomplished through the help of volunteers including the Rhode Island Trails Advisory Commission, the Appalachian Mountain Club together with other organizations that on a regular basis provide assistance with trail maintenance and management. Ms. Primiano stated that as with any project of this nature, the Department, in accordance with standard procedures, will have to address certain issues forthwith such as the illegal use of all-terrain vehicles ("ATV") on the property. The Department anticipates the usual transition period between the present illegal use of the property and the public's compliance with applicable laws regarding use of the property and the enforcement of the same. Mr. Eichler asked about potential exposure to the Department of Environmental Management/State of Rhode Island in the event that someone is injured as the result of an unforeseeable, accidental occurrence on State-owned property intended for use by the public

for recreational purposes. Ms. Kay explained that the State of Rhode Island has what is known as the Recreational Use Statute, which was passed in 1996. Said statute stipulates that when the State, a local land trust or municipality allows the public to utilize property for recreational purposes without charging a fee, the property-owner is held to the legal standard relied upon for “willful trespass” in the event that an injured party initiates legal action seeking monetary compensation for alleged injuries and/or damages and is successful relative to said claim. Ms. Kay indicated that there was an attempt to amend said statute this past year; however, it met with a tremendous opposition. Ms. Kay indicated that the State, municipalities and local land trusts have made very substantial investments in public recreational properties and the public wants to enjoy use of said properties free of charge. Therefore, the property-owners continue to be protected under the aforementioned statute. Ms. Kay noted that in the 1980s and 1990s when the State began preserving open space, many other states were also lowering the legal standard for the public’s use of recreational properties to that of “willful trespass” in order to protect their interests. A motion to approve was made by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

ITEM E – Department of Environmental Management – A request was made for approval of and signatures on a Deed to Development Rights over 60.7 acres of land located along Long Lane in the Town of Warren. Ms. Sheehan indicated that the subject property is known as the Kee Farm and is located on the Kickemuit River, giving it

substantial open space and agricultural value. Ms. Sheehan explained that the Town of Warren, the NRCS Farm and Ranchland Protection Program, the Department's Open Space Grant Program and the Agricultural Land Preservation Commission all contributed to the purchase price of said Development Rights. Mr. Woolley asked whether the Department modified the document to reflect the changes requested by the Department of Attorney General. Ms. Kay indicated that all changes have been made. A motion was made to approve by Mr. Woolley and seconded by Mr. Eichler.

Passed Unanimously

ITEM F – Department of Administration – A request for approval of and signatures on a Lease Agreement, by and between the Department of Administration and the Rhode Island Convention Center Authority for use of the Veterans Memorial Auditorium. Item F is deferred to a future meeting of the State Properties Committee at the request of the Department of Administration.

The Committee may move to go into Executive Session, pursuant to Rhode Island General Law 42-46-5(a)(5) for the specific purpose of discussion or consideration related to the acquisition or lease of real property for public purpose, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public relating to the following item:

A motion to enter into Executive Session was made by Mr. Griffith and seconded by Mr. Kay.

A roll call vote was taken and the votes were as follows: Chairman Renaud voted “Aye,” Mr. Griffith voted “Aye,” Mr. Eichler voted “Aye,” Mr. Kay voted “Aye” and Mr. Woolley voted “Aye”

ITEM E1 – Department of Transportation – A request was made for approval of and signatures on a Deed of Temporary Easement and a Deed of Permanent Easement with Providence & Worcester Railroad Company in connection with the replacement of the Conant Street Railroad Bridge #915 located in the City of Pawtucket. After discussion in Executive Session, a motion was made to approve by Mr. Griffith and seconded by Mr. Kay.

Passed Unanimously

ITEM E2 – Department of Transportation – A request was made for approval of and signatures on a Deed of Temporary Easement and a Deed of Permanent Easement with the National Rail Passenger Corp. (Amtrak) in connection with the replacement of the Conant Street Railroad Bridge #915 located in the City of Pawtucket. After discussion in Executive Session, a motion was made to approve by Mr. Griffith and seconded by Mr. Kay.

Passed Unanimously

ITEM E3 – Department of Transportation – A request was made for approval of and signatures on three (3) Temporary Easement Agreements in connection with the project referred to as the Rehabilitation of the Randall Street Bridge #974 located in the City of Providence. After discussion in Executive Session, a motion was made to approve by Mr. Woolley and seconded by Mr. Griffith.

Passed Unanimously

Mr. Griffith moved to return to the regular session of the meeting and to seal the minutes of the Executive Session until such time as the matters are resolved. Said motion was seconded by Mr. Woolley.

Passed Unanimously

The Committee returned to the regular session of the meeting at 10:55 a.m., at

which time the above motions were made relative to the three (3) Executive Session

items.

There being no further business to come before the State Properties Committee, the meeting was adjourned at 10:56 a.m. The motion to adjourn was made by Mr. Griffith and seconded by Mr. Woolley.

Passed Unanimously

Holly H. Rhodes, Executive Secretary